

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MELANIE SENTIN,
MCKAYLA RAE SENTIN,
GABRIEL HORDER,

Plaintiffs,

v.

KIMBERLY SZCZEPANKIEWICZ,
COREY COBB,
GARY MAHONEY,
JOHN DOE,

Defendants.

**DECISION
and
ORDER**

23-CV-108LJV(F)

APPEARANCES:

MELANIE SENTIN, *Pro Se*
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Amherst, Ohio 44001

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ERIE COUNTY ATTORNEY
Attorney for Defendants Szczepankiewicz and Cobb
IFEOLUWA M. POPOOLA, Assistant County Attorney,
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In this § 1983 action, Plaintiff alleges Defendants improperly removed her children and placed them in foster care in violation of her Fourth and Fourteenth Amendment rights. Before the court is Defendant Mahoney's motion, filed September 17, 2024 (Dkt. 40), requesting an

order staying discovery pending resolution of issues of Plaintiff's representation and asserted need for a Tagalog interpreter to assist Plaintiff in the conduct of Plaintiff's deposition by Defendant Mahoney's attorney.

Specifically, Defendant states that at the outset of Plaintiff's deposition on June 27, 2024, Plaintiff informed Darren Long, N.Y.S. Assistant Attorney General ("Longo"), that she expected her attorney, one Rahul Manchanda ("Manchanda") with a New York City office address, would attend the deposition. Longo Declaration (Dkt. 40-1) ¶ 5. Plaintiff also informed Longo that she required a Tagalog interpreter to assist her in the deposition. *Id.* ¶ 6. After a 30-minute delay, Plaintiff telephoned Manchanda who informed Plaintiff to proceed with the deposition without his participation. *Id.* ¶ 8. In light of this development, Longo elected to adjourn Plaintiff's deposition in order to clarify Manchanda's putative representation of Plaintiff. *Id.* ¶ 9. Thereafter, Longo communicated with Manchanda to determine whether in fact Manchanda represented Plaintiff in this matter but such effort was unsuccessful. *Id.* ¶¶ 10-14. Accordingly, Defendant requests the court conduct a conference with Manchanda to determine whether he intends to represent Plaintiff and that the court should stay discovery pending such clarification. *Id.* ¶¶ 15-16. In a scheduling order served on all parties, responses to Defendant's motion were due October 8, 2024. Only Plaintiff responded by filing a statement, in English, which failed to address the question of Manchanda's putative representation in this matter and Plaintiff's alleged need for a Tagalog interpreter. See Dkt. 42.

(1) Plaintiff's Representation.

It is basic that in a federal court action representation by an attorney is the responsibility of a non-indigent party to arrange. See *Terminate Control Corp. v. Horowitz*, 28 F.3d 1335, 1341 (2d Cir. 1994) (affirming district court's decision denying *pro se* plaintiff's request for

appointment of counsel where the plaintiff did not contest the district court's determination that the plaintiff had the financial ability to hire counsel). The court also lacks authority to assign an attorney except in the case of an indigent. *Gonzalez v. Coburn*, 2018 WL 4608205, at *1 (W.D.N.Y. Sept. 25, 2018) (citing 28 U.S.C. § 1915(e)). The docket for the instant case indicates Plaintiff has paid the \$ 402 filing fee and thus is not indigent party. See February 1, 2023 Docket Entry. In short, a party may not refuse an oral deposition based on lack of counsel. See *Schine v. Crown*, 1993 WL 127199, at ** 6-7 (S.D.N.Y. Mar. 31, 1993) (adopting report and recommendation recommending dismissal of action as sanction for *pro se* plaintiff's pattern of abusive behavior pertaining to discovery including, *inter alia*, refusing to attend oral deposition based on lack of counsel). Thus, whether Plaintiff has counsel in this action or not is a matter for Plaintiff, not the court. Defendant's request for a conference to determine whether Plaintiff will proceed with counsel is therefore DENIED.

(2) Plaintiff's Need for an Interpreter.

“Generally, *pro se* civil litigants have no entitlement to an interpreter or a translator.” *Gonzalez*, 2018 WL 4608205, at *1 (finding, based on plaintiff's interactions with court, plaintiff had “sufficient English proficiency to proceed without an interpreter”) (quoting *Fessehazion v. Hudson Grp.*, 2009 WL 2596619, at *2 (S.D.N.Y. Aug. 21, 2009) (citation omitted) (*reconsideration granted on other grds.*, 2009 WL 277043 (S.D.N.Y. Aug. 31, 2009))). Further, as “there is no specific statute which authorizes the court to appoint an interpreter in civil *in forma pauperis* actions,” *Velez v. Burge*, 2009 WL 3459744, at *2 (W.D.N.Y. Oct. 20, 2009), it follows that Plaintiff, who is not proceeding IFP, is not entitled to assignment of a translator to assist her in her deposition in this case.

Pro se litigants, like Plaintiff, are expected to conform to the Federal Rules of Civil Procedure, see *Hollingshead v. Pelkey*, 2024 WL 4333349, at * 1 (W.D.N.Y. Sept. 27, 2024) (stating that a plaintiff's *pro se* status does not excuse compliance with the Federal Rules of Civil Procedure), including Fed.R.Civ.P. 30(a)(1) (party required to appear for oral deposition). See *McDonald v. Head Criminal Court Supervisor Officer*, 850 F.2d 121, 123-24 (2d Cir. 1988) (affirming district court's dismissal of *pro se* plaintiff's complaint for violating the court's discovery order by refusing to answer questions put to him at oral deposition); see also *Jones v. Niagara Frontier Transp. Authority (NFTA)*, 836 F.2d 731, 735 (2d Cir. 1987) (affirming district court's dismissal of complaint to sanction plaintiff who repeatedly and willfully refused to answer questions at court-ordered deposition). Moreover, although the court's experience with Plaintiff's use of English is limited to its review of Plaintiff's response in Defendant's motion, see Dkt. 42, based on the court's review of Plaintiff's handwritten response, it is apparent Plaintiff is quite proficient in English and is able to articulate her positions without difficulty. Accordingly, there is no basis for delaying Plaintiff's deposition on account of Plaintiff's alleged need for a Tagalog interpreter.

(3) Stay of Discovery and Amended Scheduling Order.

Although Defendant's motion requests the court stay discovery until questions of Plaintiff's representation and need for an interpreter are clarified, in its discretion the court finds that at this point, with discovery set to end on October 31, 2024, as provided in the Scheduling Order filed on March 8, 2024 (Dkt. 31), it is more sensible that an Amended Scheduling Order be entered for good cause. See Fed.R.Civ.P. 16(b). The court notes that Defendants Cobb and Szczepankiewicz have a pending motion to dismiss Plaintiff's Amended Complaint. Dkt. 37. In this circumstance, the court finds there exists good cause to amend the Scheduling

Order and therefore requests the parties to submit, either jointly or individually, proposed Amended Scheduling Orders for the balance of the case, not later than 20 days from the filing of this Decision and Order. In the meantime, Defendants should renote and conduct Plaintiff's deposition without further delay. If Manchanda wishes to represent Plaintiff, he may do so by timely filing a notice of appearance in accordance with Local R.Civ.P. 83.2(b). Plaintiff is reminded that failure to comply with such notice may result in sanctions, including dismissal of the Amended Complaint, in accordance with Fed.R.Civ.P. 37(a)(3).

CONCLUSION

Defendant Mahoney's motion (Dkt. 40) is GRANTED in part, and DENIED in part. SO ORDERED. The Clerk of Court is directed to serve a copy of this Decision and Order on Mr. Manchanda at the address provided by Defendant. See Dkt. 40 at 4. SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dates: October 29, 2024
Buffalo, New York